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Interim Rules and Regulations for Agricultural Imports Tariff Rate Quota

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Report Highlights:

This report is an UNOFFICIAL translation of the Interim Measures for Import Tariff Rate Quota issued by the Ministry of Commerce and the State Development and Reform Commission on September 27, 2003. Exporters should carefully discuss regulations and their applications with Chinese importers to ensure their interpretation of the regulation is accurate.

Includes PSD Changes: No
Includes Trade Matrix: No
Unscheduled Report
Beijing [CH1]
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This report was prepared by the Office of Agricultural Affairs of the USDA/Foreign Agricultural Service in Beijing, People's Republic of China. While every possible care was taken in the preparation of this report, information provided may not be completely accurate either because policies have changed since its preparation, or because clear and consistent information about these policies was not available. It is highly recommended that U.S. exporters verify the full set of import requirements with their foreign customers, who are normally best equipped to research such matters with local authorities, before any goods are shipped. FINAL IMPORT APPROVAL OF ANY PRODUCT IS SUBJECT TO THE IMPORTING COUNTRY'S RULES AND REGULATIONS AS INTERPRETED BY BORDER OFFICIALS AT THE TIME OF PRODUCT ENTRY.

Summary

The following is an UNOFFICIAL translation of China's Interim Rule and Regulations for Agricultural Imports Tariff Rate Quota (TRQ) as issued by the Ministry of Commerce and the State Development and Reform Commission. The regulation is a revised version of the Interim Rules and Regulations for Agricultural Imports Tariff Rate Quota published by the former State Development and Planning Commission in January 2002 (GAIN report #2007). The document also contains one appendix, namely application form of Agricultural Product Import TRQ Certificate.

Interim Rules and Regulations for Agricultural Imports Tariff Rate Quota

Chapter One: General Provisions

Article 1. In accordance with the *Foreign Trade Law of the People's Republic of China*, the *Customs Law of the People's Republic of China*, the *Administrative Regulations on Importation and Exportation of Goods of the People's Republic of China*, and *Import and Export Tariff Regulations of the People's Republic of China*, these regulations are established to effectively facilitate the administration of Tariff Rate Quotas (TRQs) for imported agricultural products and to set up an agricultural import TRQ management system that is uniform, fair, transparent, predictable, and non-discriminatory.

Article 2. During the calendar year, based on the TRQ amount that China committed in the tariff reduction tables of China's WTO accession documents, the state shall determine the annual quantities of agricultural imports for the market through the administration of TRQs. In-quota tariff rates apply to imports of agricultural products that are within the quota quantity and out-quota imported agricultural products will be managed under the provisions of *Import and Export Tariff Regulations of the People's Republic of China*. Article 19, Item 2 of the Regulations stipulates imports with a quantity that is greater or lower than what is governed in the contract.

Article 3. Imported agricultural products subject to TRQ administration include wheat (including flour, kernel, hereinafter referred to as "wheat"), corn (including flour, kernel, hereinafter referred to as "corn"), rice (including flour, kernel, hereinafter referred to as "rice"), soybean oil, rapeseed oil, palm oil, sugar, cotton, wool, and wool tops. Detailed information in terms of import items, Harmonized System (HS) code and applied tariffs under agricultural import TRQ management will be announced separately.

Article 4. TRQs for wheat, corn, rice, soybean oil, rape oil, palm oil, sugar, and cotton are divided into two categories: state trade and non-state trade. TRQs for state trade shall be used by state owned trading enterprises; TRQs for non-state trade shall be imported by enterprises that have trading rights. End-users with trading rights may also import directly. Importation of wool and wool tops shall be conducted by designated companies in

accordance with the Administration Measures on Designated Trading of Imported Goods (MOFTEC Decree No. 21, 2001).

Article 5. Tariff quotas for agricultural imports are global quotas.

Article 6. All trade patterns of commodities under varieties stipulated in Article 3 are subject to TRQ administration.

Article 7. The Ministry of Commerce allocates import TRQs for soybean oil, rapeseed oil, palm oil, sugar, wool, and wool tops. The State Development and Reform Commission (hereinafter referred to as SDRC), in collaboration with the Ministry of Commerce, allocates the import TRQs for wheat, corn, rice, and cotton.

Article 8. Agencies authorized respectively by the Ministry of Commerce or SDRC are responsible for the following:

1. To receive applications and pass them on to the Ministry of Commerce or SDRC;
2. To receive inquiries and convey them to the Ministry of Commerce or SDRC;
3. To inform the applicant any inadequacy of his/her application, and remind him/her of revisions;
4. To issue an Agricultural Product Import TRQ Certificate to a ratified applicant.

Article 9. An Agricultural Product Import TRQ Certificate applies to imports through general trade, barter trade, border small-scale trade, aid and charities.

Imported products that enter bonded areas or export processing zones are exempt from obtaining an Agricultural Product Import TRQ Certificate.

Chapter Two: Application

Article 10. The time of accepting applications for agricultural import TRQs is from 15 October to 31 October each year (except for those that are contract-based and on a first-come first-serve basis). A month prior to this time, the Ministry of Commerce and the SDRC shall respectively publish in the *International Business Daily* and the *China Economic Herald*, as well as on the websites of the Ministry of Commerce (<http://www.mofcom.gov.cn>) and SDRC (<http://www.sdpc.gov.cn>) the total quantities of agricultural import TRQs for each agricultural product for the following year and the specific requirements for applicants, HS codes and applied tariffs determined by the State Council Tariff Commission.

Soybean oil, rapeseed oil, palm oil, sugar, cotton, wool, and wool tops shall be announced by Ministry of Commerce. Wheat, corn, rice and cotton shall be announced by SDRC.

Article 11. The Ministry of Commerce authorized agencies shall accept import TRQ applications for soybean oil, rapeseed oil, palm oil, sugar, cotton, wool, and wool tops from within their designated jurisdiction. The SDRC authorized agencies shall accept import TRQ applications for wheat, corn, rice and cotton from within their designated jurisdiction.

Article 12. The Ministry of Commerce authorized agencies shall review the applications and related supporting materials for soybean oil, rapeseed oil, palm oil, sugar, wool and wool tops according to the published requirements and forward them to the Ministry for approval prior to November 30 (except for those that are contract-based and on a first-come first-serve basis), and copy to SDRC.

The SDRC authorized agencies shall review the applications and related supporting materials for wheat, corn, rice and cotton according to the published requirements and forward the applications to SDRC for approval prior to November 30, and copy to Ministry of Commerce.

Chapter Three: Allocation

Article 13. Import TRQs shall be allocated according to the number of applications, past performance, production capacity, applicable business criteria, or be based on a first-come first-serve basis. The minimum quota amount will be limited to appropriate commercial shipping volumes for each kind of product.

Article 14. The MOFCOM and the SDRC shall respectively issue the Agricultural Product Tariff Quota Certificate to the end users before 1 January each year. The certificates shall bear the "Special Stamp of MOFCOM for Tariff Quotas" or the "Special Stamp of SDRC for Tariff Quotas". Imported products that need to be handled through a state-owned trading enterprise will be specified in the Agricultural Product Tariff Quota Certificate.

Chapter Four: Duration

Article 15. Tariff quotas go into effect on 1 January each year and are valid throughout the calendar year. The Agricultural Product Tariff Quota Certificate goes into effect from 1 January to 31 December that year. The duration for the Agricultural Product Tariff Quota Certificates on a first-come first-serve basis shall be determined in accordance with the published implementing rules.

Article 16. If tariff quota agricultural products depart the port of origin prior to 31 December in the current year and arrive at the destination in the following year, the importer must take the Agricultural Product Tariff Quota Certificate and related shipping invoice to the certificate-issuing agency for an extension. Upon verification, the certificate-issuing agency may grant an extension to the Certificate but no later than the end of February of the following year.

Chapter Five: Implementation

Article 17. End-users shall sign or entrust agents to sign import contracts in accordance with the related import regulations.

Article 18. The customs office shall establish a record on the business contract for an enterprise that imports agricultural products under TRQ management for the purpose of processing trade, based on a Processing Business License submitted by the enterprise. The customs clearance shall proceed in the presence of an Agricultural Product TRQ Certificate with its "trade pattern" column being filled in as "processing trade". If an enterprise engaged in processing trade fails to re-export the products within stipulated time frame, they shall go through the contract written-off procedures within 30 days. Customs shall handle the issue in accordance with the related regulations for processing business.

Article 19. Agricultural Product TRQ Certificate shall institute a one-certificate-for multi-shipments system. That is, if an end-user signs a contract involving import in several shipments, it may go through multiple clearances by providing the Certificate to the customs. An end-user shall fill in the columns of "end-user import information" on the Agricultural Product TRQ Certificate based on facts. If all the spaces have been filled in the certificate, he/she should renew his/her certificate for TRQs awaiting customs clearance at the certificate-issuing agency. Each shipment of goods without containers shall not exceed 5% of the stipulated quantity.

Article 20. Customs shall clear and supervise the agricultural import TRQ products under current regulations if the imported products enter the bonded warehouses, bonded areas or export processing zones. For TRQ products that come from bonded warehouses, bonded areas, or export processing zones, the customs shall process the clearance based on relevant regulations and in the presence of an Agricultural Product TRQ Certificate.

Article 21. Within 20 days after the procedures for customs clearance for the final batch of imports are completed, the end-user shall return the first page of the customs stamped Agricultural Commodity TRQ Certificate (copy for customs clearance) to the certificate-issuing agency. An end-user shall return the first page of Agricultural Product TRQ Certificate not used within the calendar year to the certificate-issuing agency by the end of January of the following year.

Chapter Six: Reallocation

Article 22. If the end-user has not signed contracts for his/her allocated state-traded quota before August 15 in the current year, he/she may choose to entrust any enterprises to import upon approval by SDRC or Ministry of Commerce as stipulated in Article 7 of this Regulation. The end-users with trading rights also can undertake direct imports.

Article 23. If the end-user having TRQ can not use up the entire specified quota in the current year in the contracts, or his/her contracts can not be completed, he/she shall return the remainder to the authorizing agency that issued the TRQ certificate before September 15.

Article 24. Applications for tariff quotas through reallocation must be forwarded by the authorizing agency to MOFCOM or SDRC. Such applications shall be accepted from September 1 to September 15 (except for those are contract based and on a first-come-first-serve basis). The SDRC and MOFCOM shall announce the specific requirements for applicants in China Economic Herald, International Business Daily, the MOFCOM website <http://www.mofcom.gov.cn/> and the SDRC website <http://www.sdrc.gov.cn> one month prior to accepting applications. TRQ for soybean oil, rape oil, palm oil, sugar, wool and wool tops shall be announced by MOC. TRQ for wheat, corn, rice and cotton shall be announced by SDRC.

Article 25. The end-user who has finished imports of allocated quotas by the end of August and has returned the first page of the customs stamped Agricultural Commodity TRQ Certificate (copy for customs clearance) to the certificate-issuing agency may apply for TRQ reallocations.

Article 26. Before September 30 of each year, Ministry of Commerce shall reallocate the unused tariff quotas for soybean oil, rapeseed oil, palm oil, sugar, wool and wool tops to end-users (except for those are contract based and on a first-come-first-serve basis); SDRC, in collaboration with MOFCOM, shall reallocate the unused tariff quotas for wheat, corn, rice and cotton to end-users. The unused tariff quotas shall be reallocated on a first-come-first-serve basis in line with the published application requirements. The minimum quota amount will be limited to appropriate commercial shipping volumes for each kind of product. The end-users being reallocated with TRQs may import through enterprises that have trading rights, or he/she may import directly if he/she has trading rights.

Chapter Seven Penalties

Article 27. If a processing enterprise sells its imported raw materials or processed products in domestic market without approval, it shall be treated in accordance with the provisions of *the*

Customs Law and the Administrative Punishment Implementation Regulations of the Customs Law.

Article 28. Whoever forges, changes, or sells and buys the Agricultural Commodity Tariff Quota Certificate shall be subject to criminal charges in accordance with the provisions concerning illegal marketing, or forging, changing, buying and selling official documents, certificates or stamps in the criminal law. If an end-user is engaged in the activities mentioned above, SDRC and MOC shall not accept his/her TRQ application within two years.

Article 29. If an end-user forges the import contract and other documents to obtain the Agricultural Product Tariff Quota Certificate by cheating, his/her Certificate shall be confiscated according to relevant law. His/her TRQ application will not be accepted within two years.

Article 30. If an end-user holding a Certificate violates the provisions in Article 23 of this Regulations, and unable to fully utilize the allocated quota, and fails to return the unused portion to the authorizing agency before September 15, his/her tariff quota in the following year shall be reduced in proportion to the unused quotas.

Article 31. If an end-user holding Certificate is unable to fully utilize the allocated quota for two consecutive years but has returned the unused quota to the authorizing agency before September 15, his/her quota in the following year shall be reduced in proportion to the unused quotas in the immediately previous year.

Article 32. If an end-user violates provisions in Article 21 of these Regulations and fails to return on time the first page (the one for the consignee of commodities for customs clearance) of the custom-stamped Agricultural Commodity Tariff quota Certificate to the certificate-issuing agency, he/she shall be considered as unable to fully utilize the tariff quotas. Consequently, his/he quota in the following year shall be reduced accordingly.

Article 33. Smuggled imports of products subject to tariff quotas shall be levied at the rates for outside tariff quotas. In addition, smugglers will be penalized according to the appropriate laws and administrative regulations.

Chapter Eight: Supplementary Provisions

Article 34. Inquires on quota allocation and reallocation shall be sent in writing to the SDRC and MOFCOM or its authorizing agencies. They shall reply to inquiries within ten working days.

Article 35. The Agricultural Product Import TRQ Certificate and the Special Stamp for Import Tariff Quotas shall be produced under the central supervision of the SDRC and MOFCOM.

Article 36. Items on the Agricultural Product Import TRQ Certificate, namely end-user registration area, serial number of TRQ certificate, name of end-user, certificate validity, trade pattern, product name, allocated quantity, state-trading quantity, issuance date, and declaration port shall be printed by computer. In case of a change of declaration port, the end-user shall renew his/her certificate at the certificate-issuing agency.

Article 37. Foreign exchange used for importing tariff quota products shall be handled in accordance with the related state regulations.

Article 38. The state trading enterprises specified in the Regulations refer to those privileged in the import business of certain products, and legally authorized by the government. The list

of the state trading enterprises shall be verified, determined, and announced by the MOFCOM.

Article 39. The end-user specified in the Regulations refers to the manufacturer, trading company, wholesalers, and retailers that receive tariff quotas for agricultural commodities directly through the application process.

Article 40. The Regulations shall take effect from the date of publication. 2003 agricultural product import TRQs shall be executed under "Interim Rules and regulations for Agricultural Product Import TRQs" (SDPC Circular #19).

